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February 8, 1977

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The Honorable Bill Lewis
Arizona State Representative
House of Representatives
House Wing, Capitol Building
Phoenix, Arizona 85007

Re: 77-29 (R76-489)

Dear Representative Lewis:

We are writing in response to your letter of December 16, 1976 regarding the effect of the execution of a directive to withhold or withdraw life sustaining procedures on the life insurance coverage of a person who purchases a life insurance policy containing the standard incontestability clause and the standard limitation of liability for suicide clause and who thereafter, pursuant to subsequently enacted legislation, executes such a directive, develops a terminal condition for which life sustaining procedures are withheld and then dies before the end of the incontestability period and before the expiration of the period specified in the suicide clause.

With respect to insurance coverage the proposed legislation about which you have inquired would provide:

A. The withholding or withdrawal of life sustaining procedures from a qualified patient pursuant to this chapter shall not, for any purpose, constitute a suicide.

B. The making of a directive shall not restrain, inhibit or impair in any manner the sale, procurement or issuance of any policy of life insurance nor shall it be deemed to modify the terms of an existing policy of life insurance. No



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policy of life insurance may be legally impaired or invalidated in any manner by the withholding or withdrawal of life sustaining procedures from an insured qualified patient, notwithstanding any term of the policy to the contrary.

Heretofore, neither the Arizona Legislature nor the Arizona courts have defined "suicide." "Suicide" generally is understood to be the taking of one's own life; i.e., an intentional self-killing. See 83 C.J.S. Suicide § 1; 45 C.J.S. Insurance § 844.

The typical insurance policy suicide clause, without any further definition of "suicide", reads:

If the insured, while sane or insane, commit suicide within two years after the policy date, the liability of the company under this policy shall be limited to the premiums actually paid, without interest, less any indebtedness on this policy.

Such a provision comports with the requirements of A.R.S. § 20-1226 under which an insurer may limit or exclude its liability for death benefits only for deaths caused² under the specific circumstances stated in the statute.

1. This clause was furnished by the Arizona Department of Insurance as the typical suicide clause.

2. A.R.S. § 20-1226 provides:

A. No policy of life insurance shall be delivered or issued for delivery in this state if it contains a provision which excludes or restricts liability for death caused in a certain specified manner or occurring while the

Under the proposed legislation, life sustaining procedures may be withheld or withdrawn only from a person suffering from a terminal condition which is defined as:

an incurable condition caused by injury, disease or illness, which, regardless of the application of life sustaining procedures, would within reasonable medical judgment, produce death and where the application of life sustaining procedures serve only to postpone the moment of death of the patient.

Assuming that a person's terminal condition were not intentionally self-inflicted, under the foregoing combination of circumstances it appears to us that the making or carrying out of a directive to withhold or withdraw life sustaining procedures would not constitute "suicide" under an insurance policy issued prior to the enactment of legislation authorizing the making and carrying out of such a directive.

Footnote 2 continued

insured has a specified status, except that a policy may contain provisions excluding or restricting coverage as specified therein in the event of death under any one or more of the following circumstances:

1. Death as a result, directly or indirectly, of war, declared or undeclared, or of action by military forces, or of any act or hazard of such war or action, or of service in the military, naval or air forces or in civilian forces auxiliary thereto, of from any cause while a member of such military, naval or air forces of any country at war, declared or undeclared, or of any country engaged in such military action.

2. Death as a result of aviation.

3. Death as a result of a specified hazardous occupation or occupations.

With regard to incontestability, it appears to us that an insurer that issues a policy of life insurance prior to the enactment of right to natural death legislation which is followed by the making and carrying out of a directive to withhold or withdraw life sustaining

Footnote 2 continued

4. Death while the insured is outside continental United States and Canada.

5. Death within two years from the date of issue of the policy as a result of suicide, while sane or insane.

B. A policy which contains any exclusion or restriction pursuant to subsection A of this section shall also provide that in the event of death under the circumstances to which the exclusion or restriction is applicable, the insurer will pay an amount not less than a reserve determined according to the commissioners reserve valuation method upon the basis of the mortality table and interest rate specified in the policy for the calculation of nonforfeiture benefits, or if the policy provides for no such benefits, computed according to a mortality table and interest rate determined by the insurer and specified in the policy, with adjustment for indebtedness or dividend credit.

C. This section shall not apply to group life insurance, disability insurance, reinsurance or annuities, or to any provision in a life insurance policy relating to Disability benefits or to additional benefits in the event of death by accident or accidental means.

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procedures leading to a death within the contestable period could not contest the validity of the insurance policy unless the company could show that the insured made false declarations at the time of the application for the insurance policy and that the company thereby was misled in issuing the policy. See National Producers Life Insurance Company v Rogers. 8 Ariz. App. 53, 442 P.2d 876 (1968). The passage of right to natural death legislation and the execution of a directive to withhold or withdraw life sustaining procedures pursuant to that legislation subsequent to the issuance of a life insurance policy, standing alone, would not, in our view, constitute conduct for which an insurer could contest the validity of a life insurance policy. Moreover, under such circumstances an insurer, in effect, would be taking the position that its insurance policy excluded liability for death for a reason or ground not authorized under A.R.S. § 20-1226.

To summarize our opinion, the enactment of right to natural death legislation about which you inquired and the making and carrying out of a directive to withhold or withdraw life sustaining procedures after the issuance of a life insurance policy have no effect on the validity of the policy. Moreover, the making and carrying out of a directive to withhold or withdraw life sustaining procedures followed by the death of an insured suffering from a terminal condition is not suicide.

An insurer intent on limiting its liability under a life insurance policy that is exempt from the provisions of A.R.S. § 20-1226 in the event of death of a terminal patient who has executed a natural death directive might take the position that the enactment of right to natural death legislation subsequent to the issuance of its insurance policy had the effect of impairing the obligation of its contract contrary to the United States Constitution and the Arizona Constitution. We doubt that

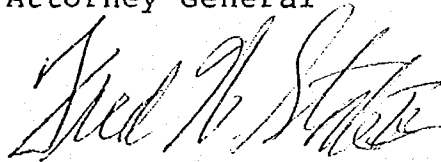
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any court would so hold, but we cannot predict court decisions with certainty. To erase any doubt about the Legislature's intention that the enactment of such legislation not adversely affect preexisting insurance, we would suggest that you consider including the proposed language appearing as A.R.S. § 36-2408.A and B in the Arizona Insurance Code under Article 1, Chapter 6, Title 20, Arizona Revised Statutes.

If we may be of further assistance to you, please call upon us.

Very truly yours,

BRUCE E. BABBITT
Attorney General

A handwritten signature in cursive script, appearing to read "Fred W. Stork, III".

FRED W. STORK, III
Assistant Attorney General

FWS:jrs